HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL No.732 OF 2007

Between:

The Union of India,
represented by its Secretary,
Home Affairs, New Delhi and others. . . .Appellants

AND

No.830742422, Constable,
S. Krishna. . . .Respondent

:: JUDGMENT ::

Counsel for the appellant : Shri M. Ganga Rao

Counsel for the respondents : Ms. Kiranmayi
for Shri J.V. Prasad

28th September, 2007

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Per G.S.SINGHVI, C.J.

This is an appeal for setting aside order dated 7-11-2006 passed by the learned Single Judge in Writ Petition No.28728 of 1995, whereby he quashed the punishment of dismissal from service imposed on the respondent herein and ordered his reinstatement with continuity of service and other attendant benefits except back wages.

The respondent was enlisted as Constable in Central Reserve Police Force (CRPF) on 1-4-1983 at Group Centre, Hyderabad. While he was working in 74 Battalion, CRPF, the respondent was sent on deputation to Sardar Vallabh Patel National Police Academy. He was repatriated on 1-2-1992. After one year and one month, he was placed under suspension and a departmental enquiry was instituted against him vide Memo dated 18-4-1993 on the following charges:

"**Article-I**

That the said No.8307422 Constable S. Krishna while functioning as Constable, committed an offence of disobedience of orders/neglect of duty in his capacity as a member of the Force under Section 11(1) of CRPF Act 1949, in that on his repatriation from deputation (NPA, Hyderabad) w.e.f. 1-2-1992 and further allotment to this unit, he failed to report to the Commandant, 69 Bn. CRPF on due date on receiving information from NPA, Hyderabad on his leave address about his allotment to this unit instead of 74 Bn ordered earlier and remained on OSL up to 16-3-1993 without permission/sanction from the competent authority.

Article-II

That the said No.830742422 Constable S. Krishna while functioning as Constable committed an offence of disobedience of orders/neglect of duty in his capacity as a member of the Force under Section 11(1) of CRPF Act, 1949, in that he failed to report for duty or at Base Hospital-II, Hyderabad when ordered to do so while overstaying leave after his repatriation from NPA, Hyderabad."

The respondent filed reply and controverted the allegations by stating that while in the National Police Academy, he became

seriously ill on 29-11-1991 and was diagnosed as having peptic ulcer and that his ailment continued till 24-2-1993. The disciplinary authority did not feel convinced and appointed Sri Sandeep Yadav, Assistant Commandant of 69 Battalion, CRPF, Moga as enquiry officer. The latter conducted enquiry in accordance with Rule 27 of the Central Reserve Police Force Rules, 1955 and submitted report with the finding that the charges levelled against the respondent have been proved. A copy of the enquiry report was furnished to the respondent and he was given opportunity to make representation. The respondent submitted reply and medical certificates for the period from 16-1-1992 to 23-2-1993 and pleaded that he may be exonerated. The disciplinary authority did not accept the medical certificates and concluded that the respondent was not a fit person to be retained in the Force. Accordingly, he passed order dated 15-7-1993 and dismissed the respondent from service. The appellate authority i.e. Deputy Inspector General of Police (OPC), CRPF, Ferozpur, vide his order dated 10-6-1994, dismissed the appeal preferred by the respondent and confirmed the punishment of dismissal from service.

The learned Single Judge briefly adverted to the facts of the case, evidence produced during the enquiry, the defence of the respondent that he was suffering from duodenal ulcer and peptic ulcer and held that the medical certificates issued by Civil Assistant Surgeon, Government Hospital, Malakpet, Hyderabad and a private medical practitioner, which was countersigned by Resident Medical Officer of Osmania General Hospital, Hyderabad, could not have been brushed aside. The learned Single Judge then observed that even though the writ petitioner has taken little more leave than required, in view of the concurrent medical opinion expressed by the doctors that he was suffering from peptic ulcer, the disciplinary authority committed a serious error by imposing the extreme penalty of dismissal from service. In the opinion of the learned Single Judge, ends of justice would have been met if punishment lesser than dismissal would have

been imposed on the petitioner. The learned Single Judge thought that the matter could be remanded to the disciplinary authority for fresh consideration, but taking into consideration the long lapse of time i.e. 12 years, he directed reinstatement of the respondent without back wages.

Sri M. Ganga Rao, learned counsel for the appellants assailed the order under challenge by arguing that the discretion exercised by the disciplinary and appellate authorities in the matter of imposition of punishment on the respondent, who was a member of disciplined Force, could not have been tampered with by the learned Single Judge without even recording a finding that the punishment was shockingly disproportionate or wholly arbitrary. He further argued that even if the learned Single Judge felt that the punishment of dismissal from service was shockingly disproportionate, the only course open to him was to remit the matter for fresh consideration by the disciplinary authority and there was no warrant for ordering reinstatement of the respondent without back wages.

Learned counsel for the respondent supported the order under challenge and argued that even though the learned Single Judge has not expressly considered the issue relating to applicability of the doctrine of proportionality, the Division Bench may not interfere with the order under challenge because the respondent has already suffered by being kept out of job for a period of more than 12 years and the learned Single Judge has effectively penalised him by denying back wages for the entire period.

We have given serious thought to the respective arguments and scrutinised the records. Sri M. Ganga Rao is right in his submission that in exercise of the power of judicial review vested in it under Article 226 of the Constitution of India, the High Court cannot, ordinarily, interfere with the discretion exercised by the employer/disciplinary authority to punish an employee found guilty of misconduct and this principle deserves to be applied with greater rigor when the Court is

called upon to consider the legality of the punishment imposed on a member of disciplined Force, but in the peculiar facts of this case, we have not felt persuaded to overturn the order of the learned Single Judge.

In the normal course, we would have remitted the case to the disciplinary authority for fresh consideration of the issue of punishment to be imposed on the respondent, but keeping in view the fact that as on today a period of more than 14 years has elapsed from the date of punishment and the disciplinary authority is not shown to have considered important factors like the total length of service of the respondent, his service record of ten years and the fact that in the past he was not punished for any delinquency, we are inclined to confirm the order under challenge because the learned Single Judge has already denied back wages to the respondent for the entire period and this would effectively deprive the respondent of other monetary benefits which he would have earned if he would have continued in service without break.

For the reason stated above, the appeal is dismissed.

G.S.SINGHVI, C.J.

28th September, 2007

C.V.NAGARJUNA REDDY, J.

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